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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 683, Misc.

WILLIAM B. HARTSFIELD,
Petitioner,

v.

HONORABLE BOYD SLOAN, United States District Judge
for the Northern District of Georgia,
Respondent.

RESPONSE

Of John Sammons Bell, as Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary Thereof; The Georgia State Democratic Executive Committee; To Reply Brief of Defendant.

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On May 29, 1958, we were served with a reply brief of the petitioner. In the beginning of that brief counsel state that the "petition remains undismissed." They seem to deem that a fact of high importance. It remains a fact as this is written (May 22, 1958).

Counsel for the petitioner labor mightily to bring Mayor Hartsfield within the scope of Title 28, Section 1343 United States Code as that section was amended by the so-called Civil Rights Act of 1957.

As so amended the pertinent part of that section is:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . .(4) To recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights, including the right to vote."
>
> Title 28, U. S. C. A., Section 1343 (1957 Pocket Part).

We refrain from repeating the discussion as to the phrase "under any Act of Congress" contained in our original brief.

We will confine the brief discussion here to the phrase "protection of civil rights, including the right to vote."

The gist of the argument of petitioner's counsel is that the action seeks to protect a civil right of Mayor Hartsfield, to wit, his right to vote in a statutory primary conducted by the Democratic Party of Georgia at its expense under the Georgia law for the nomination of State officers.

If they are permitted, as they so assiduously attempt, to carve out and ignore the phrase "under any Act of Congress," what is left? What "civil right"—what "right to vote" is sought to be protected?

If Mayor Hartsfield has any "right to vote" it is a right to vote in a primary conducted under the County Unit law. That is the only kind of statutory primary that a political party can hold in Georgia for the nomination of

statewide officers. If a political party in Georgia cannot hold a statutory primary under the County Unit system for the purpose of nominating its candidates to appear on the ballot in the general election, it cannot hold a statutory primary at all (Code of Georgia, Section 34-3212). In that event "his civil right"—his "right to vote" (in a statutory primary for state officers) will cease entirely. If he has a "right to vote" in a statutory primary of a political party, that "right to vote" has affixed to it by law the conditions of Section 34-3212 of the Georgia Code. He takes the right with the legal condition affixed to it.

That essential, fundamental fact distinguishes **United States v. Saylor**, 322 U. S. 385, cited by petitioner's counsel to support their statement that "this Court has recognized that the right to have one's vote counted without dilution (as in stuffing ballot boxes) is as equally protected as the right to register and to vote."

There, with Justices Douglas, Black and Reed dissenting, the majority of the court upheld the views of the government expressed through its counsel, Mr. Paul A. Freund, and held "the federal statute denouncing conspiracy to injure any citizen in free exercise of any right or privilege secured to him by the Federal Constitution or laws embraced conspiracy by election officers to stuff a ballot box in an election in which a member of Congress was to be elected" (64 S. Ct. 1101 [2]).

In that case, the law under which the election for United States Senator was held furnished the yardstick. In voting for the **election** of a United States Senator, each qualified voter had one vote to be considered quantitatively equal to that of every other voter. If, in reality, Brown received 600 votes, and Gray 900 votes, the election managers by fraudulently stuffing 600 additional votes for Brown into the box, would diminish and dilute the "full

value and effect" assigned to each Gray vote by the law of the State. The legal yardstick would be distorted by the act of the managers.

And, in this case, the law under which the nomination by a political party of candidates for certain offices may be accomplished in a statutory primary, furnishes the yardstick, not that each individual vote is to be counted equally but that it shall be considered as set out in that law (Ga. Code, Sec. 34-3212).

There is no provision in the Constitution or laws of the United States or the State of Georgia which compels a political party nominating candidates for offices in a primary to grant to each participant in the primary an equal voice with every other participant.

That is the salient difference between this case, and the Saylor and Classic cases.

In those cases, the election officers lessened the quantitative effect which should have been assigned to each vote by the law of the state in which the elections were being conducted. The legal value of each vote was wrongfully diminished.

Here, each vote is counted in accordance with the law under which the primary is held. Each vote is given its **legal value**.

There is no provision in the Constitution or laws of the United States which compels a state to assign a legal value to each nominating expression equal to all others.

Mayor Hartsfield is not here trying to protect his civil right to vote. He is trying to destroy it by destroying Georgia's primary law, and, so, not only destroy his statutory right or opportunity to express a choice for nomina-

tion of officers but destroy the right and opportunity of every other Georgian qualified to participate in nominating primaries, so to do.

The fundamental fallacy in Mayor Hartsfield's position is that he assumes that a state must require every political party nominating candidates to give to each participant in the nominating process, as one of his "civil rights" an equal voice with every other participant. This assumption is absolutely without legal foundation. With its fall, his whole case falls.

CHARLES J. BLOCH,
Counsel for Respondents and
Objectors Named.

Proof of Service.

I, Charles J. Bloch, counsel for the respondents and objectors named, do hereby certify that on the .... day of ....., 1958, I served copies of the foregoing Response of Party Defendants to Reply Brief of Petitioner on the several parties thereto, as follows:

1. On the Honorable Boyd Sloan, Judge of the United States District Court for the Northern District of Georgia, by mailing a copy in a duly addressed envelope, with first-class postage prepaid to him at Gainesville, Georgia, and another to him, care United States Post Office Building, Atlanta, Georgia;

2. On Ben W. Fortson, Jr., Secretary of State of Georgia, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to Hon. Eugene Cook, The Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, and B. D. Murphy, Esq., Citizens and Southern National Bank Building, Atlanta, Georgia;

3. On William B. Hartsfield, Petitioner, by mailing copies in duly addressed envelopes with first-class postage prepaid, to each of the following:

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